

1 and accordingly, a transfer pursuant to Section 1146(c) of
2 the bankruptcy code which shall not be taxed under any law
3 imposing a stamp tax or similar tax."

4 Do you have any comment on that?

5 MS. NEVINS: I don't, Your Honor. I've seen that
6 language.

7 Your Honor's probably inquiring about whether the
8 government would agree with that or determine that that's not
9 an enforceable provision.

10 THE COURT: They say that I entered this order, and
11 they appear to be quoting from that order, which others
12 drafted and I signed. But as we know from the *Scott* case,
13 which you were involved in --

14 MS. NEVINS: Yes, Your Honor.

15 THE COURT: -- the parties aren't bound by an order
16 as to which they did not -- a consent order to which they did
17 not participate. And I just wanted to see whether or not the
18 IRS took a different view than this suggests and you're
19 saying that you weren't there and -- add some focus on that
20 paragraph.

21 MS. NEVINS: Your Honor, I'm not sure what the
22 intent of that paragraph is; if it's to avoid the possibility
23 as in *Scott*, the *Scott Cable* case, the intention was to avoid
24 the imposition of capital gains tax generated by a sale under
25 a plan of reorganization.

1 That was found by Your Honor and by other courts to
2 be impermissible and a tax avoidance scheme or --

3 THE COURT: No, but the fee -- the tax avoidance
4 scheme was the thrust of *Scott*.

5 MS. NEVINS: Correct. In this instance, I don't
6 know if the intention of the parties is to have a
7 determination that the assets being sold are not going to be
8 subject to successor liability claims by the service or
9 another taxing agency --

10 THE COURT: The reason --

11 MS. NEVINS: Or if it's a capital gains or income
12 tax issue. I'm sorry.

13 THE COURT: The reason I raise it is because I
14 don't want you all to leave court today and believe that that
15 issue is off the table in the future.

16 MR. ROBERT GROSSMAN: Your Honor, if I may. The
17 1146 treatment in a case like this is generally
18 (indiscernible) because it's a real -- there are underlying
19 real estate assets. The issue is there are underlying real
20 estate assets and the transfer of those assets would be free
21 of transfer tax, but not the other issues Your Honor is
22 raising.

23 THE COURT: I just want to -- I don't have -- I
24 have a concern that people say this has already been raised
25 and concluded by the order that is referred to in the March

1 6th, 2006 -- and that's the order of June 21.

2 MR. ROBERT GROSSMAN: Right, Your Honor. That's
3 what I was standing up -- just so that the record reflects
4 what order that comes from. That comes from the June 21st,
5 2005 sale hearing, which I believe Ms. Nevins was in
6 attendance for. I'm not trying to box her in on anything, but
7 I just want to make sure that the record reflects the
8 February 2nd hearing is a different hearing than that order --

9 THE COURT: Yes, but that order is now being
10 modified and then modified again perhaps and I just don't
11 want to have people say like at least tangentially it was
12 going on this morning. This is off the table. The Court
13 can't consider it. It's already in bed and the record is
14 set.

15 MR. ROBERT GROSSMAN: Your Honor, the beneficiary
16 of the order is SWJ and they're in court today to hear Your
17 Honor.

18 MS. NEVINS: Your Honor, may I just inquire of the
19 Court of the import of the debtor's counsel's earlier
20 statement?

21 I believe the statement was that the taxes that
22 are referred to are intended to be conveyance taxes imposed
23 by a taxing authority based on a transfer of real property. I
24 just want to confirm my understanding that that's what was --

25 THE COURT: Well, we could ask -- you could ask

1 that question through me and we can get an answer.

2 MR. ROBERT GROSSMAN: Your Honor, yes. Those are
3 stamped -- we would only be able to stamp taxes which would
4 be state and local. It wouldn't really affect the federal at
5 all.

6 THE COURT: It says "Stamp or similar tax."

7 MR. ROBERT GROSSMAN: Yes, Your Honor. The case
8 law is pretty clear.

9 THE COURT: All right. Anybody have anything else?
10 No.

11 I'm going to take the position then that it's
12 premature for me to consider a motion to dismiss or convert,
13 or to set a hearing on any new motion to dismiss or convert.

14 That conclusion may change if I do not approve the
15 sale that is proposed this morning and I will now address the
16 question of whether or not to approve the sale that is
17 proposed this morning.

18 We'll take a 10-minute recess.

19 (Recess from 11:40 a.m. until 11:47 a.m.)

20 THE COURT: All right. I'm going to start with the
21 consideration of the sale and I'll give you all day, but you
22 should know that if you're planning something for this
23 afternoon, I'm going to have to leave the bench at 20 of 1:00
24 and I'll be back at 2:00. So hopefully, we can finish what we
25 need to do in an hour and if we can't, we'll continue in the

1 afternoon.

2 All right. Who is proposing this sale?

3 MR. ROBERT GROSSMAN: Your Honor, the debtor and the
4 committee and other creditors have joined together to propose
5 the sale. The sale, we believe, has been explained to I
6 think everybody in the courtroom and Your Honor prior is
7 simply a new purchase price of \$11.25 million. The price to
8 be paid, \$5.4 million in cash, as soon as Your Honor approves
9 the sale, which is in the Arent Fox trust account as we
10 speak.

11 The remaining amount of the sale, which math is
12 sometimes not my suit, 5.85, is paid by the tendering of a
13 note with nine percent interest payable by December, 2006.
14 That note --

15 THE COURT: December 31st or December 1st?

16 MR. ROBERT GROSSMAN: I think it's December 15th.
17 December 15th, Your Honor.

18 THE COURT: December 15.

19 MR. ROBERT GROSSMAN: 2006.

20 THE COURT: Yes.

21 MR. ROBERT GROSSMAN: It accrues at nine percent
22 interest. The security for the note is a basket of assets
23 that consists of all of the assets that the estate currently
24 has that are being transferred to SWJ.

25 So upon the entry of the sale order, there would be

1 a closing, the assets would be transferred pursuant to the
2 original asset purchase agreement which provides -- and I
3 will make this clear -- that it is subject to various claims
4 of the Mocco parties. It is also subject to asserted liens by
5 Titan. And to the extent there are other liens, they're
6 taking it subject to those liens. So the asset is being
7 transferred subject to those liens.

8 THE COURT: Is there any equity if all of those
9 liens are successfully prosecuted? Is there any equity?

10 MR. ROBERT GROSSMAN: If the parties against whom
11 those liens -- an example, if Mr. Mocco is successful and
12 Titan's liens -- I don't really understand so I can't talk
13 about the magnitude of them -- but if those parties were
14 successful, it is highly doubtful that the assets of the
15 estate have any value.

16 THE COURT: No equity.

17 MR. ROBERT GROSSMAN: No. There would be no equity.
18 SWJ -- yes, there's no equity. Their business decision is
19 theirs.

20 In addition to that collateral, the estate is
21 getting additional collateral for the note in the form of an
22 assignment of proceeds from -- I term them bank guarantees.
23 People have used different terms, but there are, as explained
24 to the Court, approximately 12 -- there are 12 notes issued
25 by the Bank of Bangkok for a total value of \$600 million.

1 And Cobra Ventura, which is an owner of SWJ, as was
2 disclosed in a deposition and which we've known, has agreed
3 that those assets for which they are the beneficiary will
4 stand for the estate so that even if the estate -- if the
5 assets that the estate transferred were for some reason to be
6 valueless because Mr. Mocco and/or Titan succeeded in their
7 face, we still would have access to the notes.

8 We make no representations -- I think Mr. Bainton
9 and the rest of us have been careful to say we are describing
10 the notes, there are a variety of views as to the
11 enforceability of them. It's better to have it than not, but
12 that -- I think that suffices.

13 In addition, Cobra Ventura itself, who's -- as I
14 believe sole assets of the notes, but I'm not certain -- has
15 agreed to become a guarantor on this note, the note the
16 estate's getting.

17 One of the great -- one of the benefits of that is
18 that it gives us a clear path to the notes if we need to
19 proceed against them.

20 It also takes off the table, to some degree, an
21 argument that Mr. Schreiber has advanced in the court that if
22 the sale were not approved, then our ability to go after the
23 note is somehow limited because the notes were only
24 collateral. It's a peripheral issue. But that becomes the
25 basket of collateral.

1 I think what Mr. Bainton and the rest of the
2 parties really see is that we immediately have \$5.4 million
3 of cash. We have attempted to use that in a manner to
4 satisfy a lot of the issues that we see may come up in a
5 plan, because that's really where we're moving, both with the
6 internal revenue service, the unsecured's and the admins all
7 working together.

8 If there certainly are additional funds -- if there
9 are additional funds to the estate, that will certainly be to
10 the betterment, but I think the reason the proponents are
11 taking this position, the estate takes the position, the
12 position espoused in court the last time, that I think even
13 the Court recognized, essentially, the estate is left with
14 the exact same claims that it has today if it has to go
15 against its assets. It has the additional benefit of being
16 able to go after the notes.

17 There is a subordination provision in the notes of
18 approximately \$6 million, but I think most of us believe that
19 having \$5 million today, rather than trying to have nothing
20 commence actions to get basically back to where we are today,
21 it's in the interest of the estate to have the \$5 million.

22 I think that it is in the interest of the estate
23 because in part, that will provide funding for a liquidating
24 trustee. The estate -- the committee, Mr. Bainton, Ms. Black
25 and others believe that there are one or several other

1 targets that the estate will be proceeding against to seek
2 additional revenues to bring into the estate. This would
3 provide the necessary funds to do that.

4 So basically, the position is that we are giving up
5 -- we are getting an additional series of collateral, we are
6 maintaining a lien on all our existing assets.

7 I'm not advocating this -- I just bring up that the
8 original contract price -- and the Court pointed out that it
9 was sold for 8.9, but the original contract price, had there
10 been no other bidders, was 5.5 million.

11 So when people determine what you would take for
12 the estate, one could -- and the Court -- it was made very
13 clear in the court that nobody believed anybody else would
14 bid, was approximately the cash we have now.

15 I don't use that and say that there wasn't an 8.95
16 opening sale price. Arguments about the other bidder, all of
17 that stuff is past -- there are responses to it, but it's not
18 necessary.

19 But that's why we would urge the court -- I can
20 also inform the Court that I've been informed directly by the
21 parties who have put up -- excuse me. Have put up the money
22 for SWJ and I know we've all been in courts many, many years
23 and heard the ship is leaving.

24 I truly believe in this case, because of the basket
25 of assets we're selling and the difficulty of getting your

1 arms around them, unless we do conclude the sale today, then
2 as Your Honor well put, the proponents of the motion to
3 convert will have won by default.

4 THE COURT: To confirm the sale today, what do you
5 require from the court?

6 MR. ROBERT GROSSMAN: Your Honor, I think we merely
7 require an entry of the form of order that had been
8 submitted, which modifies the June 21st order that provides
9 that the sale price in the form of cash and note is deemed in
10 the best interest of the estate and satisfies that sale order
11 and that's basically all we are asking for today.

12 THE COURT: So you have electronically transmitted
13 to the clerk the modification of the June 21, '05 order.

14 MR. SCHREIBER: Your Honor, I believe it is
15 attachment no. 1 to docket entry no. 904. There is only one
16 other issue, Your Honor. I think --

17 THE COURT: Hold on one second.

18 (Pause.)

19 THE COURT: Gentlemen, I'm going to have to have
20 that order emailed to us in order for me to put my signature
21 on it, if I decide to do that.

22 MR. SCHREIBER: We can do that, Your Honor. And I
23 would add as of last night it was one verbiage change -- one
24 language change that we've wanted to add, which is when it
25 indicates that the \$5 million in cash we paid to the debtor -

1 - it really was debtor's counsel that was supposed to be in
2 there and we apologize for that. But that one little change.

3 THE COURT: Now, does everybody in this room have
4 the text of the order you want me to see?

5 MR. SCHREIBER: Yes.

6 THE COURT: I have -- who's wagging yes, then
7 wagging no.

8 MR. ROBERT GROSSMAN: Your Honor, if anybody
9 doesn't, we will give it to them right away. It was served on
10 everybody at one point. Whether they are technically sitting
11 with it now I can't address.

12 THE COURT: Well, I need to have them have the text
13 of --

14 MR. ROBERT GROSSMAN: I agree, Your Honor.

15 THE COURT: -- what you want me to sign before I
16 sign it.

17 MR. ROBERT GROSSMAN: We can do that right now.

18 THE COURT: And perhaps I ought to adjourn or
19 recess so you could do that.

20 MR. ROBERT GROSSMAN: I think they should be able to
21 look at it, read it, so when Your Honor hopefully agrees to
22 sign it --

23 THE COURT: Somebody may need to raise a question
24 about it --

25 MR. SCHREIBER: Your Honor, it's the same order

1 that was given to them weeks ago. The same order without
2 changes.

3 THE COURT: All right. Let me see -- the nay
4 sayer's. Mr. Scarpone.

5 MR. SCARPONE: I want to see the order. There's
6 been a lot of paper that was emailed around over the last
7 couple of weeks. I want to see the order before it's entered
8 and I don't have it with me right now.

9 THE COURT: All right. Ms. Nevins --

10 MS. NEVINS: Your Honor, I would also like the
11 opportunity to just review one more time --

12 THE COURT: What I'm going to do at the end of
13 this, if I decide to electronically sign it, is I'm going to
14 ask all of you whether or not you have the authority to
15 consent and understand that your consent will bind your
16 clients and that this is not a work in progress.

17 It's the final product and that you expect me to
18 sign it, and you're representing to me that if I sign it, you
19 have read it and raise whatever objections you have to it, if
20 any, and those -- and you'll all be bound by whatever I do,
21 except your rights to appeal, but not appeal on the basis
22 that you haven't seen it.

23 MR. ROBERT GROSSMAN: Your Honor, I would --

24 MR. SCARPONE: May I make one other request, and
25 that is that -- I know -- we're into that same pattern again

1 today. Mr. Grossman is telling us that it has to close
2 today. We have no evidence of that fact and by the way, we
3 were told that last June, too.

4 THE COURT: All right. But I'm going to --

5 MR. SCARPONE: And we've -- but I want to object --

6 THE COURT: We've had enough time --

7 MR. SCARPONE: -- to representations of counsel
8 being substituted for evidence. If there is a need to close
9 today --

10 THE COURT: Sir, let me say this to you. I've
11 asked everybody here if they have anything to say about what
12 is being done. Everybody -- I gave everybody an opportunity
13 to address whatever objections.

14 The only objection you could raise now, it seems to
15 me, is on the basis of the sale shouldn't go through. You
16 understand what it's going to be, or you don't know what the
17 sale order is.

18 I'm going to give you a chance to see what the
19 proposed sale order is and I'm going to get this thing over
20 with one way or the other, and then you could take this to
21 another court. This case is four years old. I don't want it
22 to be any older. Your rights, I think, are preserved. You
23 could file whatever motions you want.

24 As you say, you're going to take a position on this
25 in any event. You know that someone's going to be shooting

1 at your client.

2 MR. SCARPONE: That's correct, Judge. But I do
3 want to see the order, because we had some problems in the
4 past --

5 THE COURT: You're going to see it.

6 MR. SCHREIBER: Your Honor, I've given them --

7 MR. SCARPONE: I wanted time to read it, too.

8 THE COURT: I'm going to give you a chance --
9 That's a good point. Not only are you going to see it,
10 you're going to be able read it.

11 MR. SCARPONE: Well, thank you, Judge.

12 MR. SCHREIBER: Thank you, Judge. For the record, I
13 have -- while Your Honor was engaged in colloquy with Mr.
14 Scarpone, I have given each of them a copy of the order so
15 the record is clear. They each have the order.

16 THE COURT: All right. Now, everybody has the
17 order? Everybody's got it.

18 MR. BAINTON: Your Honor, just because -- you know,
19 Mr. Grossman and I, while we're friends personally, we've not
20 always been friends in this courtroom.

21 What these fellows are telling you is the
22 unvarnished truth. They made an application some time ago to
23 amend the amended sale order. And in support of that
24 application they gave everybody on the service list a form of
25 order.

1 Now, that's the form of order they're asking you to
2 sign. Folks have had it -- the verbiage for weeks. We -- we
3 have asked for one small change, which we've told you about.

4 The order literally says that the money will be
5 paid to the debtors. For reasons which need no explanation,
6 we don't want any cash going to Mr. Licata. We want the
7 money to stay with the lawyers, the debtor's lawyers, so that
8 it can be disbursed according to the plan. And trust me,
9 under the plan of reorganization, Mr. Licata's not getting a
10 dime.

11 So the only change that we're making is to make
12 abundantly clear that the money is never going to be in any
13 place other than Arent Fox or disbursed pursuant to an order
14 of this court. It's not going to Mr. Licata.

15 THE COURT: All right.

16 MR. BAINTON: So this is a smoke screen.

17 THE COURT: I don't care -- I'm not -- don't draw
18 me into the Licata target. I'm only dealing with what I've
19 got now. What happens later on, I'll deal with when it
20 happens later on.

21 MR. BAINTON: My point is only everybody's had this
22 form of order for weeks.

23 THE COURT: All right.

24 MR. BAINTON: That's my only point.

25 THE COURT: All right. Okay. So now I have to

1 give you all a chance to read it without interruption. How
2 much time do you need to need do that, having in mind that I
3 want to be -- I've got to keep an appointment so I ought to
4 be leaving here about 20 of. Do you want to come back here
5 at about 2:15?

6 MR. BAINTON: Well, we could do this, Your Honor.
7 My friend, Mr. McCarthy, has a copy of the order that was
8 filed. Obviously, the date needs to be changed. That's the
9 other change. We need to change the date. But we have the
10 text.

11 If you would like to take a brief adjournment, we
12 could avail ourselves of the photocopy machine and give to
13 the people who have copies of this order -- it's
14 interlineated (sic). You can't sign it. But you have the
15 text.

16 We can come back in however long they need to read
17 it, 15 minutes, and talk about its text and we'll email you
18 the corrected copy, because you don't want to sign an order
19 where we've changed the date. But we can email you a copy.

20 THE COURT: Well, it's going to an electronic
21 order.

22 MR. BAINTON: Pardon me?

23 THE COURT: It will be an electronic order.

24 MR. BAINTON: Exactly. But my only point is as I
25 stand here I can give all of these people the form of order

1 with the date changed in pen. We can talk about what it says
2 and then assuming there even might be changes, we'll file
3 whatever we agree.

4 THE COURT: All right.

5 MR. BAINTON: So we don't need to take all that
6 time.

7 THE COURT: Okay. This is going go to be --

8 MR. BAINTON: If you want to break for 15 minutes,
9 we'll go to the photocopy machine and give everybody a set.

10 THE COURT: This is going to be a sale on a 363(b)
11 and (f) with certain interests held; some interest being
12 subject to and the *Lionel* position remains the same and I've
13 ruled on that.

14 And if you get what you want, that is those of you
15 who want it, the sale proceeds will fund a plan which is
16 going to come up quickly.

17 ALL: Yes, Your Honor.

18 THE COURT: All right. Why don't we -- if I give
19 you all say till a quarter after, does that give you enough
20 time to read it? If not, I'll give you more time.

21 MR. SCHREIBER: It does, Your Honor.

22 THE COURT: Is that enough time? Gentlemen? Those
23 who haven't seen it?

24 MR. DAUGHERTY: Thank you, Your Honor.

25 THE COURT: I don't hear anybody say it isn't.

1 All right. I'll see you at quarter after.

2 MR. SCHREIBER: Thank you, Your Honor.

3 (Recess from 12:05 p.m. until 12:21 p.m.)

4 THE COURT: All right. We have everybody we need?
5 Mr. Grossman is not here.

6 (Pause.)

7 MR. ROBERT GROSSMAN: Sorry, Your Honor.

8 THE COURT: All right. All right, Mr. Grossman, go
9 ahead.

10 MR. BAINTON: Your Honor, we have distributed copies
11 -- sorry. Never mind.

12 MR. ROBERT GROSSMAN: Your Honor, I was needing --
13 servicing other people. I believe everybody has now read the
14 order. I stand on my prior comments and we ask the Court to
15 enter the order.

16 THE COURT: All right. Does anybody need more time
17 to look at the order?

18 (No audible response.)

19 Okay. How much more time do you need?

20 (Pause.)

21 Mr. Daugherty, could you finish this?

22 (Pause.)

23 All right. I want to make sure everybody knows what
24 I am being asked to sign. I'll take a ten-minute recess --
25 it won't make much sense take a ten-minute recess, because I

1 have to recess again in 20 minutes. So I might as well --
2 I'll see you all a little bit after 2:00.

3 MS. NEVINS: Your Honor, if I may. I'm sorry. I am
4 required to appear in New Haven at 3:00 and I'm going to have
5 to leave here at 2:00 to be there.

6 THE COURT: Which court do you have to go to?

7 MS. NEVINS: It's Judge Weil's court, Your Honor.

8 THE COURT: I want to finish this today. If the
9 Internal Revenue Service has a position --

10 MS. NEVINS: I very much want to as well.

11 THE COURT: -- I'm going to have to hold you here.
12 So I think maybe you'd better advise the parties down there
13 that there is a risk that you're going to be here, unless
14 you're going to tell me that you've seen the order, you have
15 no objection to it. If you're going to object to it, I want
16 to have your objection on the record.

17 MS. NEVINS: Your Honor, I don't intend to object
18 to the order, but I do have additional comments that I'd like
19 to put on the record regarding the order, just so the record
20 is very clear.

21 I will call Judge Weil's --

22 THE COURT: Well, could you do that now? Put it on
23 the record?

24 MS. NEVINS: Yes, Your Honor.

25 THE COURT: If you could put it on the record now

1 and then say on the basis of what you've put on the record
2 you consent to the entry of the order as to its form and
3 content, then -- and then if you ask to be excused, I'll
4 excuse you, so long as we understand that you have said
5 everything that you have to say.

6 MS. NEVINS: Thank you, Your Honor.

7 With respect to the order that's been circulated, I
8 have received a copy today of what is going to be ordered, or
9 what is going to be presented to Your Honor for consideration
10 and I have no objection to it.

11 I do understand there's a change with respect to a
12 date that is going to be made and I have no objection to that
13 change.

14 The comment that I wanted to place on the record is
15 that there have been discussions among the parties about the
16 terms of a plan of reorganization and a term sheet was
17 circulated to Your Honor's chambers last night and to all the
18 parties, and I've had subsequent discussions with counsel
19 relating to the terms of that term sheet.

20 There have been some oral modifications to the term
21 sheet agreed to and I am making no objection to the entry of
22 the sale order based on those oral representations of changes
23 and modifications to the term sheet and in particular to the
24 treatment of the IRS and some other matters.

25 Your Honor, finally, with respect to some of the

1 other topics and some of the issues raised by Mr. Daugherty
2 and the motion to convert, I have questions of Mr. Licata
3 relating to certain documents that have been circulated among
4 the parties that form some of the bases for Mr. Daugherty's
5 motion to convert.

6 I would like to inquire of Mr. Licata relating to
7 those and I would like to inquire of the court, if the court
8 could inquire if the debtor's counsel will accept service of
9 a subpoena under a Rule 2004 order, which I intend to apply
10 for, Your Honor, to have Mr. Licata appear in a deposition at
11 the U.S. Attorney's Office to answer questions about some of
12 those documents.

13 THE COURT: All right. Is Mr. Licata's attorney
14 here?

15 MR. ROBERT GROSSMAN: Your Honor, as the debtor's
16 counsel, as Mr. Licata as a debtor, we certainly would.

17 MS. NEVINS: My understanding is he's a debtor and
18 a debtor-in-possession.

19 MR. ROBERT GROSSMAN: Yes. He's a debtor and a
20 debtor-in-possession. We would accept service of the
21 subpoena for that purpose.

22 THE COURT: All right. Does that satisfy you?

23 MS. NEVINS: Yes. Thank you.

24 THE COURT: All right. Anything else you want to
25 add?

1 MS. NEVINS: No, Your Honor, and I thank you for
2 inquiring and allowing me to make the other court appearance.

3 THE COURT: You're quite welcome.

4 Anything else? All right. Then why don't I see
5 you people back here around a quarter after 2:00. Court's
6 adjourned -- court's in recess.

7 (Recess at 12:26 p.m.)

8 (Remaining portion of proceedings transcribed under
9 separate cover.)

10 I, CHRISTINE FIORE, court-approved transcriber, certify
11 that the foregoing is a correct transcript from the official
12 electronic sound recording of the proceedings in the above-
13 entitled matter.

14 

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16 _____ June 8, 2006

17 Christine Fiore
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